

Hate Crimes

The second category of statistics you must disclose after criminal offenses is hate crimes. A **hate crime** is a *criminal offense committed against a person or property which is motivated, in whole or in part, by the offender's bias*. **Bias** is a *preformed negative opinion or attitude toward a group of persons based on their race, gender, religion, disability, sexual orientation or ethnicity/national origin*.

Although there are many possible categories of bias, under Clery, only the following six categories are reported:

- **Race.** *A preformed negative attitude toward a group of persons who possess common physical characteristics (e.g., color of skin, eyes, and/or hair; facial features, etc.) genetically transmitted by descent and heredity, which distinguish them as a distinct division of humankind (e.g., Asians, blacks, whites).*
- **Gender.** *A preformed negative opinion or attitude toward a group of persons because those persons are male or female.*

- **Religion.** *A preformed negative opinion or attitude toward a group of persons who share the same religious beliefs regarding the origin and purpose of the universe and the existence or nonexistence of a supreme being (e.g., Catholics, Jews, Protestants, atheists).*
- **Sexual orientation.** *A preformed negative opinion or attitude toward a group of persons based on their sexual attraction toward, and responsiveness to, members of their own sex or members of the opposite sex (e.g., gays, lesbians, heterosexuals).*
- **Ethnicity/national origin.** *A preformed negative opinion or attitude toward a group of persons of the same race or national origin who share common or similar traits, languages, customs and traditions (e.g., Arabs, Hispanics).*
- **Disability.** *A preformed negative opinion or attitude toward a group of persons based on their physical or mental impairments/challenges, whether such disability is temporary or permanent, congenital or acquired by heredity, accident, injury, advanced age or illness.*

For Clery purposes, hate crimes include any offense in the following two groups that is motivated by bias.

Figure 5. Categories of hate crime offenses

Group A²

- Murder and Non-negligent manslaughter
- Forcible sex offenses
- Non-forcible sex offenses
- Robbery
- Aggravated assault
- Burglary
- Motor vehicle theft
- Arson

Group B²

- Larceny-theft
- Simple assault
- Intimidation
- Destruction/damage/vandalism of property

² The terms “Group A” and “Group B” are used for the purposes of discussion only and are not HEA-related terms.

The offenses in Group A include all of the *Clery Act* offenses discussed earlier in this chapter (with the exception of Negligent Manslaughter and Weapons: Carrying, Possessing, Etc., Drug Abuse Violations, and Liquor Law Violations which cannot be classified as hate crimes). In addition to those offenses, the Group B offenses, **i.e., larceny-theft, simple assault, intimidation, and destruction/damage/vandalism of property, should only be included in your Clery statistics if they are hate crimes.**

1. **Larceny-Theft** is the unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. (Larceny and theft mean the same thing in the UCR.) **Constructive possession** is the condition in which a person does not have physical custody or possession, but is in a position to exercise dominion or control over a thing.

Classify as Larceny:

- Thefts of bicycles or automobile accessories.
- Shoplifting.
- Pocket-picking.
- The stealing of any property or article which is not taken by force and violence or by fraud.
- Any of the above regardless of the value of the item or items taken. (For example, include the unlawful taking of a parking sticker that is peeled off a car windshield.)
- Attempted larcenies.

Do not classify as Larceny:

- Motor vehicle theft.
- Attempted motor vehicle theft.
- Embezzlement.
- Confidence games.
- Forgery.
- Worthless checks.

- 2. Simple Assault** is *an unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.*

Include all assaults which do not involve the use of a firearm, knife, cutting instrument or other dangerous weapon and in which the victim did not sustain serious or aggravated injuries.

- 3. Intimidation** is *to unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.*

A person is assumed to be placed in “reasonable fear” if he or she reports threatening words or other conduct to law enforcement personnel. To be the victim of intimidation, one doesn’t have to be the intended target of the offender. For example, a person who reports seeing anti-gay threats on a bathroom wall to law enforcement is considered a victim. (For the Intimidation to be considered a hate crime there would have to be other supporting evidence of bias as well.) Include in this category cyber-intimidation if the victim is threatened via computer while on your Clery geography.

- 4. Destruction/Damage/Vandalism of Property** is *to willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.*

Classify as Destruction/Damage/Vandalism of Property:

A wide range of malicious behavior directed at property, such as:

- Cutting auto tires.
- Drawing obscene pictures on restroom walls.
- Smashing windows.
- Destroying school records.

- Defacing library books.

Do not classify as Destruction/Damage/Vandalism of Property:

Incidents of burning that willfully or maliciously destroy, damage or deface property. Classify such incidents as Arson.

Classifying a crime as a hate crime is sometimes difficult. The following information adapted from the FBI's *Uniform Crime Reporting Hate Crime Data Collection Guidelines* and *Training Guide for Hate Crime Data Collection* should be useful in guiding you.

Before an incident can be classified as a hate crime, sufficient objective facts must be present to lead a reasonable and prudent person to conclude that the offender's actions were motivated, in whole or in part, by bias. **While no single fact may be conclusive, facts such as the following, particularly when combined, are supportive of a finding of bias:**

- a. The offender and the victim were of a different race, religion, disability, sexual orientation and/or ethnicity/national origin. For example, the victim was black and the offender was white.
- b. Bias-related oral comments, written statements or gestures were made by the offender which indicate his or her bias. For example, the offender shouted a racial epithet at the victim.
- c. Bias-related drawings, markings, symbols or graffiti were left at the crime scene. For example, a swastika was painted on the door of a synagogue.
- d. Certain objects, items or things which indicate bias were used. For example, the offenders taped a photo of a burning cross to the door of the victim's dorm room.
- e. The victim is a member of a racial, religious, disability, sexual-orientation or ethnic/national origin group which is overwhelmingly outnumbered by other residents in the student housing facility where the victim lives and the incident took place. This factor loses significance with the passage of time (i.e., it is most significant when the victim first

moved into the facility, and becomes less and less significant as time passes without incident).

- f. Several incidents occurred in the same location at or about the same time, and the victims were all of the same race, religion, disability, sexual orientation or ethnicity/national origin.
- g. A substantial portion of the campus community where the crime occurred perceived that the incident was motivated by bias.
- h. The victim was engaged in activities promoting his or her race, religion, disability, sexual orientation or ethnicity/national origin. For example, the victim was a member of the NAACP or participated in gay rights demonstrations on campus.
- i. The incident coincided with a holiday or a date of particular significance relating to a race, religion, disability, sexual orientation or ethnicity/national origin (e.g., Martin Luther King Day, Rosh Hashanah).
- j. The offender was previously involved in a similar Hate Crime or is a hate group member.
- k. There were indications that a hate group was involved. For example, a hate group claimed responsibility for the crime or was active on the campus.
- l. An historically established animosity existed between the victim's and the offender's groups.
- m. The victim, although not a member of the targeted racial, religious, disability, sexual-orientation or ethnic/national origin group, was a member of an advocacy group supporting the precepts of the victim group.

Additional considerations in determining whether an incident is a hate crime:

- **Need for a case-by-case assessment of the facts.**
The aforementioned factors are not all-inclusive of the types of objective facts which evidence bias motivation. Therefore, examine each case for facts

which clearly provide evidence that the offender's bias motivated him or her to commit the crime.

- **Misleading facts.** Be alert to misleading facts. For example, the offender used an epithet to refer to the victim's race, but the offender and victim were of the same race.
- **Feigned facts.** Be alert to evidence left by the offenders that is meant to give the false impression that the incident was motivated by bias. For example, students of a religious school, hoping that they will be excused from attending class, vandalize their own school, leaving anti-religious statements and symbols on its walls.
- **Offender's mistaken perception.** Even if the offender was mistaken in his or her belief that the victim was a member of a racial, religious, disability, sexual-orientation or ethnic/national origin group, the offense is still a Hate Crime as long as the offender was motivated by bias against that group. For example, a non-gay student leaving a publicized gay rights meeting in a noncampus fraternity house, is followed back to campus and attacked behind a dorm by six teenagers who mistakenly believed the victim is gay. Although the offenders were mistaken, the offense is a Hate Crime because it was motivated by the offenders' anti-gay bias.

Remember, it is the perception of the offender, not the perception of the victim, that determines whether a crime is classified as a Hate Crime. Also, knowing that an offender is prejudiced is not enough to classify a crime as a Hate Crime. There must be evidence that the offender was motivated by that prejudice to commit the crime.

Rules for Counting Hate Crimes

Hate crimes are counted in the same manner that the offenses are when they are not hate crimes except that the **hierarchy rule does not apply to hate crimes**. This means that:

- You must count all of the offenses committed in a multiple offense incident that are bias-motivated. For example, there is a single reported incident involving an Aggravated Assault and a Motor Vehicle Theft

that were both motivated by bias. Disclose statistics for both crimes.

- You must classify only the crimes that are bias-motivated as hate crimes in a multiple-offense incident. For example, three armed men commit a robbery on the porch of a fraternity house. Two of the offenders go inside the house intending to rob more students. One of them spots a Hispanic woman, grabs her, and rapes her. The two offenders were later arrested and the investigation showed that although the robbery was not bias-motivated, the rape was. Classify only the forcible Sex Offense as a hate crime.
- For any Group A hate crime (see page 56 for the list of Group A hate crimes), your statistics should indicate the offense and also the offense with the category of bias. For example, if an Aggravated Assault is a hate crime, disclose one Aggravated Assault statistic in the general offenses category and one Aggravated Assault motivated by (category of bias) in the hate crime category.
- The exception is when the Aggravated Assault statistic is not disclosed in the general offenses category because of the hierarchy rule. For example, for a single incident involving both a Forcible Sex Offense and an Aggravated Assault that were both hate crimes, disclose only the Forcible Sex Offense in the general offenses category and both the Forcible Sex Offense and the Aggravated Assault in the hate crimes category.

Examples of Hate Crimes

Scenario 1: One night a student with known anti-gay sentiments steals a number of books by gay and lesbian authors from a campus library exhibit. He leaves a note on the exhibit table that reads, “Gay and lesbian books don’t belong in our library.” When he is caught leaving the library with a large bag of books, he starts shouting that gay students have been getting too much attention on campus and he was tired of it. Classify this as one on-campus Larceny-Theft characterized by sexual orientation bias.

Examples of Hate Crimes (Continued)

Scenario 2: A white student causes a disturbance in an on-campus classroom during a discussion on race relations. The student begins shouting racial epithets while pointing at black class members. The instructor calls campus security for assistance. A white security officer and a black security officer arrive. When the black officer tries to subdue the student, the student starts shoving the officer and shouting racial epithets at him. Classify this as one on-campus Simple Assault characterized by racial bias.

Scenario 3: A campus police officer overhears a white student and a black student arguing over a parking space on campus. They are shouting obscenities at one another and the white student shoves the black student who scrapes his hand on the asphalt when he falls. The officer approaches the students and asks for an explanation for the argument. The students tell him that one of them was driving toward the parking space first but didn't use his turn signal to indicate he wanted to park there. The other student drove into the space not knowing that the first student had intended to park there. The officer did not find any evidence that the Simple Assault was motivated by bias. Do not classify this incident as a hate crime.

Scenario 4: During finals week, a gay faculty member gets a series of phone calls in his noncampus office. When he answers, the caller says that she hates gay people and then hangs up. On the third night, the caller says that the faculty member had better be careful because something terrible was about to happen to gay people at the school. The faculty member is afraid and calls the local police to report the threat. Classify this as one noncampus Intimidation based on sexual orientation bias.

Scenario 5: Several students call the campus security office to report swastikas spray-painted on the walls in a hallway of an on-campus student housing facility. Campus security personnel investigate but cannot find conclusive evidence that the markings were bias-motivated. Do not classify this incident as a hate crime.

Scenario 6: Several students call the campus security office to report swastikas spray-painted on the hallway walls of an on-campus student housing facility on the floor where members of a Jewish student group live. The spray-painting follows a week of escalating tension between some Jewish and non-Jewish students over news about the Israeli-Palestinian conflict. Campus security personnel investigate and based on the evidence, conclude that a hate crime was committed. Classify this as one on-campus Intimidation characterized by religious bias and one on-campus student housing facility Intimidation characterized by religious bias.

Examples of Hate Crimes (Continued)

Scenario 7: An on-campus student center features a photo exhibit of famous Muslim-Americans and their achievements. Next to the display case is a second unrelated photo exhibit that features several well-known school alumni. An employee who is prepping the coffee bar for the day notices that there are what appear to be permanent ink markings on the glass over some of the facial features of photos of the Muslim-Americans. There are no markings on the other exhibit case. The employee reports the incident to the school's public safety officer who is on the other side of the campus and in the process of examining defaced posters announcing a meeting of the school's Muslim-American student group. After examining all of the evidence the officer concludes that a hate crime was committed. Classify these defacings as one on-campus Destruction/Damage/Vandalism of Property incident characterized by religious bias.